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Cases, Regulations and Statutes

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exclusion amount would be $5,250,000 less $1,500,000 needed to cover her estate's property, leaving $3,750,000. At the husband's death in 2024, his own applicable exclusion amount of $6,400,000 plus $3,750,000 from his wife's earlier death, would total $10,150,000. That would cover the 400 acres of farmland even if it had increased in value to $25,375 per acre.

What are the negatives in electing special use valuation in the wife's estate?

First, electing special use valuation in the wife's estate would result in special use value setting the income tax basis. Thus, the basis of her 400 acres would be $4,000 per acre (the special use value) rather than $10,000 per acre (its fair market value at the time of her death) for $6,000 per acre gain on sale after her death. Of course, if the land is not sold, the basis is relevant only for purposes of depreciation on fences, tile lines and buildings and other depreciable assets.

Second, the deceased spousal unused exclusion amount could be lost if the husband remarried in 2014 to a wealthy individual who died in 2021 leaving all of her property to her children but also destroying her husband's deceased spousal unused exclusion amount of $3,750,000 (because she became *the last deceased spouse*).

Third, property values could fall and reduce substantially the projected federal estate tax at the survivor's death.

What is the likely position of the Internal Revenue Service in all of this?

Unlike alternate valuation,[6] which resides adjacent to special use valuation in the Internal Revenue Code, and requires that the election must demonstrate that the election is only available if it would decrease the gross estate and federal estate tax,[7] there is nothing in the special use valuation statute[8] or the regulations which impose a comparable requirement for filing a special use valuation election where no federal estate tax would be due. However, it is entirely possible that, given the recent enactment of portability,[9] the Internal Revenue Service in a ruling or notice (or the Department of the Treasury (in regulations)) could take the position that an election under special use valuation cannot be made where no federal estate tax was due.

That position is strengthened by an overall review of why special use valuation was enacted (to reduce the federal estate tax owed on real property used in a farm or ranch business), by the fact that recapture provisions contemplate that the election would reduce federal estate tax due and part or all of the tax saved could be subject to recapture,[10] and by the argument that special use valuation is a nullity if it does not deliver tax benefits to estates and heirs in a particular case and should not be used or relied upon otherwise.

It is not at all clear that IRS could prevail in litigation but clients should be made aware that defending an election to increase the portability amount could be costly.

ENDNOTES

[1] I.R.C. § 2010(c)(4). See Harl, "Portability—Great Idea But Full of Planning Problems," 22 *Agric. L. Dig.* 137 (2011); Harl, "Regulations Issued for 'Portability,' " 23 *Agric. L. Dig.* 97 (2012).

[2] See Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, § 302(a)(1), 124 Stat. 3296 (2010).

[3] See Duffy, Iowa Farmland Survey, Iowa State University, December 2012.

[4] I.R.C. § 2032A(e)(7).

[5] See I.R.C. § 2010(c)(4).

[6] I.R.C. § 2032.

[7] I.R.C. § 2032(c).

[8] I.R.C. § 2032A.

[9] I.R.C. § 2010(c)(4).

[10] I.R.C. § 2032A(c).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ANIMALS

HORSES. The plaintiff was injured by a horse which had escaped from its owner at a county fair. The plaintiff was a volunteer at the fair, helping with the 4-H horse show, and had attempted to stop the horse, but the horse ran over the plaintiff. Although the plaintiff accepted workers' compensation payments for the injury, the plaintiff sued the defendant university for negligence. The university argued that the acceptance of the workers' compensation payments subjected the plaintiff to the exclusive remedy provisions of the workers' compensation law. The court held that the plaintiff was a volunteer and not an employee of the university at the time of the accident; therefore, the plaintiff was not subject to the exclusive remedy provisions of the workers' compensation law. The university also sought summary judgment under the Indiana Equine Activity Act, Ind. Code § 34-31-5-1. The plaintiff argued that the injuries did not result from an inherent risk of equine activities because the horse charged at and trampled the plaintiff. The court disagreed, holding that the

risk of injury from an escaped and agitated horse was within the risks covered by the Equine Activity Act. The trial court had also awarded summary judgment for the negligence claims against the horse owners. On appeal, the appellate court upheld the summary judgment because the plaintiff failed to provide evidence that the owners knew that the horse had a propensity to spook at fairs. **Einhorn v. Johnson, 2013 Ind. App. LEXIS 495 (Ind. Ct. App. 2013)**.

BANKRUPTCY

GENERAL

DISPOSABLE INCOME. After the debtor had filed for Chapter 13, the debtor filed an income tax return for the prior tax year claiming a refund resulting from overpayment of withheld taxes, earned income credit and child tax credit. The Chapter 13 plan claimed the federal tax refund as exempt under the Alabama exemptions for personal property and public assistance. The court allowed the exemptions. The trustee objected to the plan because the debtor did not provide for payment of all disposable income since the earned income tax credit portion of the exempt refund was not applied to pay unsecured creditors. The court held that the earned income tax credit was to be included in the disposable income of the debtor when the refund was received; therefore, the plan could not be confirmed because it did not include the EIC in the amount paid to unsecured creditors. ***In re*** **Cook, 2013-2 U.S. Tax Cas. (CCH) ¶ 50,555 (Bankr. N.D. Ala. 2013)**.

FEDERAL TAX

AUTOMATIC STAY. The debtors had filed for Chapter 13 and received a discharge under a plan which provided for full payment of IRS tax claims. However, the IRS withheld a subsequent refund as partial payment of the claims after the debtors failed to make any plan payments for the taxes. The debtors filed a motion in the Bankruptcy Court to hold the IRS in contempt and for sanctions for the IRS violation of the discharge injunction of Section 524(a)(2). The Bankruptcy Court ruled that (1) the IRS had to pay the withheld refund, (2) the IRS was prohibited from contacting the debtors as to the plan payments of the tax claims, and (3) the debtors were required to exhaust administrative remedies as to the amount of damages and attorney's fees that might be awarded. The debtors challenged the third holding but the appellate court ruled that I.R.C. § 7433 required the exhaustion of administrative remedies for damages and attorney's fees before the Bankruptcy Court could rule on those issues. ***In re*** **McDonald, 2013-2 U.S. Tax Cas. (CCH) ¶ 50,540 (D. Nev. 2013)**.

CONTRACTS

MITIGATION OF DAMAGES. The plaintiff entered into a contract with the defendant pig farmer to provide weaned pigs every nine weeks for 14 months. The defendant agreed to pay invoices for the delivered pigs and to pay interest for any late payments. The plaintiff delivered 2,276 weaned pigs and sent an invoice to the defendant who paid for the pigs by check. However, the check was returned for insufficient funds and the plaintiff was required to sue for payment. Although the defendant admitted the delivery and acceptance of the pigs and the defendant's failure to pay for them, the defendant argued that the plaintiff failed to make any effort to mitigate the damages by repossessing the pigs and selling them elsewhere. Applying Minnesota law, as required under the sales agreement, the court held that Article 2 of the U.C.C., Minn. Stat. § 336.2-105(1), applied to the transaction as a sale of goods. The court also held that, under Minn. Stat. § 336.2-709(1)(a), a seller of goods may bring an action for the price of the goods sold and is not required to mitigate the damages, if the buyer has accepted the goods. Here, the defendant admitted to accepting the delivery of the pigs; therefore, the court held that the plaintiff was not required to make any mitigation efforts and could sue for the full contract price. The court also discussed the effect of Article 9 of the U.C.C., which could apply because the plaintiff had taken a security interest in the pigs. The court held that, under Minn. Stat. § 336.9-601(a)(c), the plaintiff had an option to repossess the pigs or pursue recovery of the purchase price. Thus, the court held that, under Article 9, the plaintiff was not required to repossess the pigs. The court granted summary judgment for the plaintiff as to the purchase price plus interest required under the sales contract. **Land O'Lakes Purina Feed, LLC v. Jaeger, 2013 U.S. Dist. LEXIS 145856 (S.D. Iowa 2013)**.

UNJUST ENRICHMENT. One of the plaintiffs purchased an Irish Draught horse and had the other plaintiff manage the horse to compete in jumping competitions. When the horse developed health issues and could not compete, the manager arranged to have the defendant lease the horse for breeding, although the lease allowed the defendant to enter the horse in competitions if the horse was healthy enough. The lease provide no rental payments but required the defendant to pay for all expenses for the horse during the lease. The defendant was able to breed the horse to two of the defendant's mares and the offspring had shown potential to become successful competitors. The horse recovered and the defendant entered the horse in competitions where the horse's success greatly increased its value for future breedings, according to the defendant. The plaintiff provided some funds to the defendant to assist with the competition costs. The defendant claimed that the plaintiffs orally promised to continue the payments and that the defendant could keep the horse for the rest of its life. The defendant had obtained 14 straws of frozen semen from the horse when the plaintiffs sued to recover the horse, but the defendant was advised by veterinarians that the frozen semen had a low viability rate. The trial court granted the plaintiffs' suit in replevin for recovery of the horse and enforced the terms of the lease which had expired. The defendant sought appeal of the trial court's judgment as to recovery of compensation to the defendant under a theory of unjust enrichment based on the significant increase in the value of the horse while under the defendant's care. The appellate court held that the defendant had failed to provide sufficient proof of the value of the horse at the end of the lease. The court noted that the value of the horse as a breeding stallion was limited because of the low viability of frozen

semen. The court also noted that the defendant had obtained two offspring free and had received funds from the plaintiffs to offset competition costs. **Shaw-Kennedy v. Hunter, 2013 Wis. App. LEXIS 783 (Wis. Ct. App. 2013)**.

FEDERAL FARM PROGRAMS

ORGANIC FOOD. The AMS has adopted as final regulations addressing recommendations submitted to the Secretary by the National Organic Standards Board (NOSB) following their November 2011 and May 2012 meetings. These recommendations pertain to the 2013 Sunset Review of substances on the USDA National List of Allowed and Prohibited Substances. Consistent with the recommendations from the NOSB, the final rule continues the allowed uses of multiple synthetic and nonsynthetic substances and the prohibition of one nonsynthetic substance, calcium chloride, on the National List (along with any restrictive annotations). This rule also removes one synthetic substance, tartaric acid, from the National List. **78 Fed. Reg. 61154 (Oct. 3, 2013)**.

FEDERAL ESTATE AND GIFT TAXATION

GIFTS. The taxpayer entered into a binding net gift agreement with the taxpayer's four adult children. At the time of the gift the taxpayer was 89 years old. In the net gift agreement the taxpayer agreed to make gifts of cash and securities to the donees, who, in exchange, agreed to assume and to pay any federal gift tax liability imposed as a result of the gifts, including any federal or state estate tax liability imposed under I.R.C. § 2035(b) as a result of the gifts in the event that the taxpayer passed away within three years of the gifts. The net gift agreement provided that a donee had to return the gift if the donee fails to pay to the estate the amount of any federal or state tax attributable to the gift to the donee. The estate hired an appraiser who determined the value of the net gift by reducing the fair market value of the cash and securities by both (1) the gift tax the donees paid and (2) the actuarial value of the donees' assumption of potential I.R.C. § 2035(b) estate tax. The appraiser determined the actuarial value of the donees' assumption of the potential I.R.C. § 2035(b) estate tax by calculating petitioner's annual mortality rate for the three years after the gift. The IRS disallowed the reduction in the value of the net gifts by the actuarial value of the donees' assumption of the potential I.R.C. § 2035(b) estate tax because the IRS argued that this value was zero. The court discussed its prior holding in *McCord v. Comm'r, 120 T.C. 358 (2003), rev'd and rem'd sub nom. Succession of McCord v. Comm'r, 461 F.3d 614 (5th Cir. 2006)*. The Tax Court in *McCord* agreed with the IRS that the I.R.C. § 2035(b) liability was too speculative to have a determinable value to offset part of the gift value. However, in this case, the Tax Court decided to reject its holding in *McCord* and held that the value of the potential I.R.C. § 2035(b) liability was a factual question, but, if proved, could reduce the value of the net gift. **Steinberg v. Comm'r, 141 T.C. No. 8 (2013)**.

INSTALLMENT PAYMENT OF ESTATE TAX. The estate had filed for two extensions of time to file and pay for federal estate taxes because of difficulties in valuing the estate property, consisting of several interests in businesses and trusts. The estate filed a return and made the election to pay a portion of the estate taxes in installments. However, probate court litigation and other problems caused the estate to seek additional extensions and to fail to pay interest on deferred and non-deferred estate taxes. After the estate failed to pay interest, penalties and estate tax installments, the IRS terminated the installment election. The estate appealed, arguing that the termination was arbitrary, capricious and unreasonable. It is not specifically discussed in the case, but it appears that the estate believed that it did not owe estate taxes because one of the major assets in the estate had a value of zero. The IRS had valued the asset at over $93 million. However, the court held that the failure to make payment of two of the installments and assessed penalties and interest was sufficient to terminate the installment payment election. **Estate of Adell v. Comm'r, T.C. Memo. 2013-228**.

FEDERAL INCOME TAXATION

NOTE: The government shutdown resulted in a complete loss of information from the IRS, Tax Court and other federal courts during the shutdown, resulting in a significant loss of developments to report in this issue. We will return to the normal reporting of income, gift and estate tax developments with the next issue.

BUSINESS EXPENSES. The taxpayer operated a tree trimming service but failed to file returns and pay taxes for two taxable years. The IRS made assessments for taxes, interest and penalties based on substitute returns. The taxpayer eventually filed returns for those years, agreeing to all the income listed by the IRS but adding business expenses as deductions against business income. The taxpayer listed, as a cost of goods sold, the expenses from hiring a subcontractor to do some of the tree work; however, the taxpayer did not provide a beginning and ending inventory amount. The court held that the subcontractor expense, even if allowed, was not a cost of goods sold because the work produced no inventory. The court also disallowed the expense as a labor deduction because the taxpayer failed to substantiate the expense. The taxpayer also claimed car and

truck expenses but did not fill out Part IV of Schedule C, providing information on the vehicles used in the business. The taxpayer also failed to provide any written evidence to support the car and truck expenses; therefore, the court disallowed any deduction for those expenses for lack of substantiation. The taxpayer claimed a deduction for liability insurance but failed to provide any direct evidence of payment of the policy premiums; therefore, the court disallowed any deduction for insurance. ***In re* Walmsley, 2013-2 U.S. Tax Cas. (CCH) ¶ 50,524 (Bankr. D. Or. 2013)**.

DEDUCTIONS. The taxpayer was an attorney who had failed to file an income tax return for 2007 and 2008 until after a deficiency notice was issued by the IRS based on a substitute return. The taxpayer also filed an untimely filed 2010 income tax return which claimed a net operating loss. The taxpayer sought to claim 2008 deductions and NOL carrybacks to 2008 to reduce the taxes owed in 2008. However, the written materials supporting the NOL and deductions were rejected as untimely filed with the IRS and court. Without the documents, the taxpayer's case was supported only by the taxpayer's testimony, which the court rejected as subjective and self-serving. Thus, the court held that the deductions and NOL carrybacks were properly disallowed by the IRS. **Kornhauser v. Comm'r, T.C. Memo. 2013-230**.

EMPLOYEE EXPENSES. The taxpayer was a college professor of music and claimed travel expense deductions on Schedule C and Schedule A for trips to rehearsals and performances as a musician. The issue in the case was whether the expenses were unreimbursed employee expenses eligible for a deduction on Schedule A. The taxpayer argued that the trips were necessary for taxpayer's work as a professor because the rehearsals and performances were necessary to keep the taxpayer informed about current trends in music. The court agreed that the trips to the rehearsals and performances were a necessary part of the taxpayer's employment. The second issue was whether the taxpayer sufficiently substantiated the travel expenses. The taxpayer had lost the records for several tax years in a flood but had one year's set of records. The taxpayer testified that the surviving year's records could be used to reconstruct the missing years because the taxpayer had activities which carried over year to year. The court allowed the reconstructed records to prove the expenses for the missing years. Thus, the court allowed the deductions on Schedule A for the travel expenses for the rehearsals and performances, although it disallowed expenses claimed as deductions on Schedule C which duplicated the expenses claimed on Schedule A. **Scully v. Comm'r, T.C. Memo. 2013-229**.

IRA. The taxpayer received distributions from three IRAs owned by the taxpayer. The taxpayer opened a new IRA but the IRA custodian would not accept the distributed funds because the 60-day rollover period had elapsed. The taxpayer sought a waiver of the 60-day rollover requirement, arguing that the original IRA bank failed to tell the taxpayer that there was a 60-day requirement to rollover the distributed funds. The IRS refused to grant a waiver because the taxpayer had not demonstrated that any of the factors in *Rev. Proc. 2003-16, 2003-1 C.B. 359* existed to prevent the taxpayer from timely rolling over the funds. **Ltr. Rul. 201339002, July 1, 2013; Ltr. Rul. 201339003, July 1, 2013**.

INVOLUNTARY CONVERSIONS. The IRS has issued guidance on determining the replacement period for application of I.R.C. § 1033(e) to the sale of livestock sold on account of drought. *Notice 2006-82, 2006-2 C.B. 529*. Under that guidance, under I.R.C. § 1033(e)(2)(B), the standard replacement period (four years after the close of the first taxable year in which any part of the gain from a drought sale occurs) can be extended by the Secretary of the Treasury if the Secretary determines that the drought area was eligible for federal assistance for more than three years. The IRS, after consultation with the National Drought Mitigation Center, publishes in September of each year a list of counties for which exceptional, extreme, or severe drought was reported during the preceding 12 months. Taxpayers may use this list instead of U.S. Drought Monitor Maps to determine whether a 12 month period ending on August 31 of a calendar year includes any period for which exceptional, extreme, or severe drought is reported for a location in the applicable region. The IRS has published a list of the counties and parishes in the United States that have suffered exceptional, severe or extreme drought during the 12 months ending August 31, 2013, sufficient to extend the livestock replacement period. **Notice 2013-62, I.R.B. 2013-__; http://www.irs.gov/pub/irs-drop/n-13-62.pdf**.

SAFE HARBOR INTEREST RATES

November 2013

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	0.27	0.27	0.27	0.27
110 percent AFR	0.30	0.30	0.30	0.30
120 percent AFR	0.32	0.32	0.32	0.32
		Mid-term		
AFR	1.73	1.72	1.72	1.71
110 percent AFR	1.90	1.89	1.89	1.88
120 percent AFR	2.07	2.06	2.05	2.05
		Long-term		
AFR	3.37	3.34	3.33	3.32
110 percent AFR	3.70	3.67	3.65	3.64
120 percent AFR	4.05	4.01	3.99	3.98

Rev. Rul. 2013-22, I.R.B. 2013-__.

SELF-EMPLOYMENT TAX. CCH has reported that *Morehouse v. Comm'r, 140 T.C. No. 16 (2013)* has been appealed to the Eighth Circuit Court of Appeals. The Tax Court held that an investor in farmland which the investor bids into the Conservation Reserve Program is subject to the 15.3 percent self-employment tax on the basis that such an investment is a trade or business. See Harl, "The Latest Chapter in the CRP Saga," 24 *Agric. L. Dig.* 97 (2013); Harl, "Surprising Move By the Tax Court on Self-Employment Tax Liability," 140 *Tax Notes* 931, No. 9 (August 26, 2013).

TAX RETURN PREPARERS. The IRS has announced that, "[d]ue to the lapse in government funding, the 2014 PTIN renewal season is delayed. An email or letter will be sent to all current PTIN holders notifying you when the 2014 renewal season opens. The online PTIN system is still available for users to log in and

view or change information or to secure a PTIN for 2013."

WAGES. The taxpayer was employed as an airline pilot and filed income tax returns for two years claiming zero income because the taxpayer "did not have any taxable income because he did not perform a 'service' (1) within the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa, (2) on or in connection with an American vessel or aircraft under a contract of service entered into within the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa, (3) for the United States or any instrumentality thereof." the court held that the wages earned by the taxpayer as an airline pilot were taxable income. The appellate court affirmed in a decision designated as not for publication. **Nelson v. Comm'r, 2013-2 U.S. Tax Cas. (CCH) ¶ 50,522 (11th Cir. 2013), *aff'g*, T.C. Memo. 2012-232**.

INSURANCE

HORSES. The plaintiff purchased equine insurance on a horse owned by the plaintiff and leased to a horse trainer. The policy application required that the plaintiff declare that the horse had not been treated for any illness or injury for the year prior to issuance of the insurance policy, which the plaintiff did. The policy also required that the plaintiff provide "immediate" notice to the insurance company of any injury or illness of the horse after issuance of the policy. The insurance company provided a 24 hour phone number for reporting an illness or injury. On June 27, 2011, the trainer discovered that the horse was lame. On the same day, the trainer informed the plaintiff's trainer of the lameness who began treatment by icing the lame leg until July 6, 2011. The horse was then shipped to another state for examination by a veterinarian. The insurance company was notified on July 12, 2011, 15 days after the lameness was discovered, and the horse was euthanized in September 2011. The insurance company denied coverage for the death of the horse because the company was not notified immediately about the illness. The plaintiff sued for breach of contract and the insurance company sought a summary judgment. The insurance company first argued that the plaintiff violated the policy terms by failing to disclose treatment of the horse within the year prior to the issuance of the policy. The court denied summary judgment on this claim because there remained an issue of fact as to whether the treatment of the horse involved an illness or injury. The insurance company also argued that the plaintiff violated the policy terms by failing to immediately notify the company of the lameness. The court held that notice after 15 days did not satisfy the immediate notice requirement. The plaintiff also argued that the plaintiff was not aware of the lameness for most of the 15 days, but the court held that the plaintiff's trainer was aware of the lameness on the first day and that awareness was attributed to the plaintiff. **Hauser v. Great American Assurance Co., 2013 U.S. Dist. LEXIS 140380 (N.D. Ill. 2013)**.

LABOR

AGRICULTURAL EMPLOYEES. The appellant owned and operated a farm in the business of raising, training, boarding and managing horses and the giving of horseback riding lessons. The appellant hired employees to perform services for the horses and maintenance of the farm and equipment. After one of the terminated employees filed for unemployment insurance benefits, the state initiated a compliance audit because the appellant did not pay any unemployment insurance taxes. In an administrative law hearing, the state determined that the boarding of horses belonging to other parties and the giving of horseback riding lessons were not agricultural activities; therefore, those employees were not agricultural employees and the appellant was required to pay unemployment insurance taxes. However, the administrative law judge noted that the appellant had not kept sufficiently accurate records to determine when the employees were performing agricultural labor, i.e., working for the appellant on the appellant's horses, and when they were performing non-agricultural labor, i.e., working on the boarded horses or the horses used in the horseback riding lessons. The administrative law judge ruled that, because the portion of agricultural and non-agricultural work could not be calculated, all employees were considered non-agricultural. The court affirmed the administrative ruling. **Packer v. The Indiana Dept. of Workforce Development, 2013 Ind. App. LEXIS 456 (Ind. Ct. App. 2013)**.

NEGLIGENCE

OPEN AND OBVIOUS DANGER. The plaintiff was an employee of the defendant and was filling a storage bin with soybeans delivered on a truck. The plaintiff used an auger owned by the defendant. The defendant had cut a hole in the auger hopper area in order to facilitate a repair of the auger. The plaintiff was aware of the hole but during the operation of the auger, the hole was covered by the soybeans. During the unloading process, the plaintiff attempted to move to the other side of the auger by stepping on the hopper to climb over it. The plaintiffs foot fell through the hole, causing physical damage to the plaintiff's leg. The plaintiff filed a negligence complaint against the defendant, claiming that the defendant had a duty to provide the plaintiff with a safe workplace, failed to adequately inspect the hopper and auger, failed to identify or notify the plaintiff of the dangerous condition, and failed to properly repair the hopper prior to using it. The trial court had granted summary judgment for the defendant, ruling that the defendant owed a duty to provide a safe working place but that duty was cancelled by the obvious nature of the hole in the auger. On appeal, the appellate court reversed, holding that there was evidence presented that the plaintiff could not see the hole and that the hole was not visible during the soybean unloading process. **Smith v. Myre, 2013 Ill. App. Unpub. LEXIS 2145 (Ill. Ct. App. 2013)**.

PRODUCTS LIABILITY

COMBINE. The plaintiff was injured while trying to clean out the stone trap on the bottom of a combine manufactured by the defendant. The plaintiffs' complaint alleged defective design, inadequate instruction, failure to warn, loss of consortium and negligent infliction of emotional distress as to other family members. The defendant sought summary judgment because the plaintiff did not intend to introduce any expert testimony. The plaintiff argued that the plaintiff intended to use the comparison of other combines by other manufacturers to show better designs and the negligent design of the defendant's combine. The plaintiff argued that the designs of the other combines were understandable to lay persons and did not need expert testimony to explain the designs to the jury. The court agreed, denied the motion for summary judgment and held that expert testimony was not necessary to show defective design or failure to warn from the placement of warning signs, location of turn-off switches and methods of clearing the stone trap door. The defendant also sought summary judgment on the issue of infliction of emotional distress as to the plaintiff's family members because the family members did not witness the accident. The court also denied this motion because there was evidence that the family members discovered the plaintiff injured under the combine and had to administer first aid. **Hein v. Deere & Co., 2013 U.S. Dist. LEXIS 132415 (N.D. Iowa 2013)**.

SECURED TRANSACTIONS

CONVERSION. The plaintiff was an implement dealer which had sold a tractor. The buyer financed the purchase through the manufacturer but granted a security interest to the plaintiff. The buyer sold the tractor to the defendant who put the tractor up for sale. The buyer defaulted on the purchase agreement and the plaintiff discovered that the defendant had purchased the tractor for much less than the fair market value. The defendant claimed that the buyer did not inform the defendant that the tractor was subject to any security interest. The court held that the defendant was not a bona fide purchaser of the tractor because the defendant failed to search the security interest records to verify that the tractor was not subject to a security interest. In addition, the defendant's attempt to hide the location of the tractor after learning about the security interest also constituted conversion. Thus, the court held that the trial court's grant of summary judgment to the plaintiff on the claim of conversion was proper. **Pierrard v. Wright Implement 1, 2013 Ind. App. Unpub. LEXIS 1171 (Ind. Ct. App. 2013)**.

LEASE VS. SECURITY INTEREST. The debtor had borrowed money from a bank and pledged the debtor's dairy cows as collateral. The bank perfected that security interest. The loan was refinanced and the collateral was expanded to include "all crops, farm products and livestock currently owned or hereafter acquired." The bank also perfected that security interest. After the refinancing of the loan, the debtor entered into "Dairy Cow Lease" agreements with the plaintiff to lease cows purchased by the debtor but reimbursed by the plaintiff. The lease terms were 50 months and placed the risk of loss on the debtor. The court noted that the useful life of a dairy cow was less than 50 months. The debtor sold culled cows and purchased replacements, sometimes using the debtor's own funds to purchase new cows. The debtor filed for Chapter 12 and was found to have an insufficient number of cows to satisfy the leases and security interests. The Bankruptcy Court ruled that the leases were security interests and not true leases and that the bank held the prior perfected security interest in all the remaining cows. On appeal, the central issue was whether the lease exceeded the useful life of the cows. The lessor argued that there was a reasonable expectation that the lessee would cull cows and replace them, extending the useful life of the leased cows. The appellate court disagreed and held that the useful life of the cows under the lease did not include the useful lives of any replacements. The appellate court affirmed the Bankruptcy Court's ruling that the leases were actually security interests subject to the bank's prior perfected security interest. **Sunshine Heifers, LLC v. Purdy, 2013 U.S. Dist. LEXIS 137361 (W.D. Ky. 2013), *aff'g*, 2013 Bankr. LEXIS 772 (Bankr. W.D. Ken. 2013)**.

Agricultural Law Press
127 Young Rd., Kelso, WA 98626

AGRICULTURAL TAX SEMINARS

by Neil E. Harl

Join us for expert and practical seminars on the essential aspects of agricultural tax law. Gain insight and understanding from one of the country's foremost authorities on agricultural tax law. The seminars will be held on two days from 8:00 am to 5:00 pm. On the first day, Dr. Harl will speak about farm and ranch income tax. On the second day, Dr. Harl will cover farm and ranch estate and business planning. Registrants may attend one or both days, with separate pricing for each combination. Your registration fee includes written or electronic (PDF) comprehensive annotated seminar materials and lunch. **Online registration is available at www.agrilawpress.com.** Here are the dates and cities for the seminars in fall 2013:

November 7-8, 2013 - Hilton Garden Inn, Indianapolis, IN; **November 14-15, 2013** - Parke Hotel, Bloomington, IL; **November 18-19, 2013** - Clarion Inn, Mason City, IA; **Dec. 16-17, 2013** - Adams State University, Alamosa, CO

The topics include:

First day

FARM INCOME TAX

New Legislation
Reporting Farm Income
- Constructive receipt of income
- Deferred payment and installment payment arrangements for grain and livestock sales
- Using escrow accounts
- Payments from contract production
- Development in SE tax for CRP payments
- Leasing land to family entity
- Items purchased for resale
- Items raised for sale
- Crop insurance proceeds
- Weather-related livestock sales
- Sales of diseased livestock
- Reporting federal disaster assistance benefits
- Gains and losses from commodity futures, including consequences of exceeding the $5 million limit

Claiming Farm Deductions
- Soil and water conservation expenditures
- Fertilizer deduction election
- Depreciating farm tile lines
- Farm lease deductions
- Prepaid expenses
- Preproductive period expense provisions
- Regular depreciation, expense method depreciation, bonus depreciation
- Paying rental to a spouse
- Paying wages in kind
- Section 105 plans

Sale of Property
- Income in respect of decedent
- Sale of farm residence
- Installment sale including related party rules
- Private annuity
- Self-canceling installment notes
- Sale and gift combined.

Like-Kind Exchanges
- Requirements for like-kind exchanges
- "Reverse Starker" exchanges
- What is "like-kind" for realty
- Like-kind guidelines for personal property
- Partitioning property
- Exchanging partnership assets

Taxation of Debt
- Turnover of property to creditors
- Discharge of indebtedness
- Taxation in bankruptcy

Second day

FARM ESTATE AND BUSINESS PLANNING

New Legislation
Succession planning and the importance of fairness
The Liquidity Problem
Property Held in Co-ownership
- Federal estate tax treatment of joint tenancy
- Severing joint tenancies and resulting basis
- Joint tenancy and probate avoidance
- Joint tenancy ownership of personal property
- Other problems of property ownership

Federal Estate Tax
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- Special Use Valuation
- Family-owned business deduction recapture
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Limited Partnerships
Limited Liability Companies
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Closely Held Corporations
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- Developing the capitalization structure
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- "Section 1244" stock

Status of the Corporation as a Farmer
- The regular method of income taxation
- The Subchapter S method of taxation, including the "two-year" rule for trust ownership of stock
- Underpayment of wages and salaries

Financing, Estate Planning Aspects and Dissolution of Corporations
- Corporate stock as a major estate asset
- Valuation discounts
- Dissolution and liquidation
- Reorganization

Social Security
- In-kind wages paid to agricultural labor

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